

FILED	RECEIVED
ENTERED	SERVED ON
COUNSEL/PARTIES OF RECORD	
OCT 23 2012	
CLERK US DISTRICT COURT	
DISTRICT OF NEVADA	
BY:	DEPUTY

1

2

3

4

5

6

7

8 MATTHEW SCOTT WHITE,

9 *Petitioner,*

10 vs.

3:10-cv-00803-HDM-WGC

11 ORDER

12 E.K. McDANIEL, *et al.*,13 *Respondents.*14
15 This habeas matter under 28 U.S.C. § 2254 comes before the Court on petitioner's
16 motion (#18) for a stay to return to state court to exhaust unexhausted claims.17 The matter presently is pending for review of the merits on the single ground
18 presented, which appears on initial review to be exhausted. In the present motion, petitioner
19 seeks a stay so that he may raise unspecified new grounds in the state courts based on
20 alleged new evidence that have not been exhausted previously.21 A petitioner may seek a stay of a mixed petition containing exhausted and
22 unexhausted claims to return to the state courts to exhaust the unexhausted claims without
23 being required to establish, *inter alia*, good cause for the failure to exhaust if the petitioner
24 dismisses the unexhausted claims without prejudice. See, e.g., *King v. Ryan*, 564 F.3d 1133,
25 1140-41 (9th Cir. 2009). However, the grant of a stay in such circumstances remains
26 discretionary with the district court. 564 F.3d at 1139 & 1141. The court may decline to enter
27 a stay, for example, where the unexhausted claims do not relate back to a timely and
28 exhausted claim in the federal petition and are untimely. 564 F.3d at 1141-43.

In the present case, petitioner has not presented any claims over and above the sole ground presented in the federal petition. Nothing in the record reflects whether the unspecified new claims potentially might be either valid or timely at this juncture. The Court therefore will deny the present motion without prejudice. The Court will defer action in the matter thereafter for sixty days to give petitioner an opportunity to file a motion for leave to amend the petition along with a new – and separate – motion to stay. If petitioner does not present potentially viable claims and does not demonstrate in the motion to amend that the unexhausted claims relate back to a timely and exhausted claim in the original federal petition or otherwise potentially may be timely, any such motion to amend and motion to stay will be denied. If petitioner does not seek such relief within sixty days of entry of this order, the Court thereafter will proceed forward in the matter on the existing papers on file.

12 Petitioner must certify in his certificate of service that he has served any paper filed in
13 this matter on the individual attorney who has entered an appearance for respondents.
14 Generic service on the general address for the Nevada Attorney General is not sufficient. The
15 Court has not directed a response from respondents other than the prior limited records
16 response, but petitioner nonetheless must properly serve all papers filed in this matter on the
17 individual Deputy Attorney General who has entered a notice of appearance. If petitioner fails
18 to do so, his papers may be stricken for failure to comply with the orders of the Court.

19 IT THEREFORE IS ORDERED that petitioner's motion (#18) for a stay is DENIED
20 without prejudice.

21 DATED: October 22, 2012.

Howard D McFallen

HOWARD D. MCKIBBEN
United States District Judge